

REMARKS

This Amendment is being filed in response to the Office Action mailed April 6, 2007, which has been reviewed and carefully considered. Reconsideration and allowance of the present application in view of the amendments made above and the remarks to follow are respectfully requested.

By means of the present amendment, the current Abstract has been deleted and substituted with the enclosed New Abstract which better conforms to U.S. practice.

By means of the present amendment, claims 1-12 have been amended for non-statutory reasons, such as for better form including beginning the dependent claims with 'The' instead of 'A', and deleting reference numerals typically used in European practice that are known to not limit the scope of the claims. Claims 1-12 were not amended in order to address issues of patentability and Applicants respectfully reserve all rights under the Doctrine of Equivalents.

In the Office Action, the Examiner indicated that claims 4 and 6 would be allowable if rewritten in independent form. Applicants

gratefully acknowledge the indication that claims 4 and 6 contain allowable subject matter. By means of the present amendment, claims 4 and 6 have been rewritten in independent form. Accordingly, it is respectfully requested that independent claims 4 and 6 be allowed.

In the Office Action, the Examiner provisionally rejected claims 1-2, 5 and 8-12 under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1, 5-6, 10-12 and 14 of copending Application No. 10/556,285. The Examiner indicated that a terminal disclaimer may be used to overcome this rejection. This rejection is respectfully traversed. In particular, independent claims 1, 10 and 14 of copending Application No. 10/556,285 require a pump arranged to controllable "alter the shape of the meniscus". (Emphasis added)

In stark contrast, the present invention as recited in independent claim 1, and similarly recited in independent claims 8 and 11-12, amongst other patentable elements, requires (illustrative emphasis provided) :

at least one pump arranged to controllably
alter a position of the meniscus along the
optical axis without changing a shape of the

meniscus by altering a relative volume of each of said first and second fluids contained within the chamber.

A pump arranged to controllable alter the shape (as recited in independent claims 1, 10 and 14 of copending Application No. 10/556,285) is diametrically opposite, and thus teaches away from, a pump arranged to "alter a position of the meniscus along the optical axis without changing a shape of the meniscus," as recited in independent claims 1, 8 and 11-12 of the present application. Accordingly, withdrawal of the provisional obviousness-type double patenting rejection is respect

In the Office Action, claims 1-3, 5, 7-8 and 11-12 are rejected under 35 U.S.C. §102(b) as allegedly anticipated by U.S. Patent No. 4,890,903 (Treisman). It is respectfully submitted that claims 1-3, 5, 7-8 and 11-12 are patentable over Treisman for at least the following reasons.

Treisman is directed to an adjustable liquid lens or mirror having a chamber delimited by a flexible membrane. The flexible membrane separates, and is in contact with two fluids. In Treisman, the shape of the flexible membrane is changed.

In stark contrast, the present invention as recited in

independent claim 1, and similarly recited in independent claims 8 and 11-12, amongst other patentable elements, requires (illustrative emphasis provided) :

the chamber containing a first fluid and a second fluid in contact over a meniscus.

Two fluids that are in contact over a meniscus is nowhere taught or suggested in Treisman. Rather, Treisman teaches that the fluids contact a membrane, and do not contact over a meniscus. Further, Treisman discloses to change the shape of the flexible membrane. There is no teaching or suggestion in Treisman of "at least one pump arranged to controllably alter a position of the meniscus along the optical axis without changing a shape of the meniscus," as recited in independent claim 1, and similarly recited in independent claims 8 and 11-12.

Accordingly, it is respectfully submitted that independent claims 1, 8 and 11-12 are allowable, and allowance thereof is respectfully requested. In addition, it is respectfully submitted that claims 1-3, 5, 7 and 9-10 should also be allowed at least based on their dependence from independent claims 1 and 8.

In addition, Applicants deny any statement, position or

PATENT

Serial No. 10/556,243

Amendment in Reply to Office Action mailed on April 6, 2007

averment of the Examiner that is not specifically addressed by the foregoing argument and response. Any rejections and/or points of argument not addressed would appear to be moot in view of the presented remarks. However, the Applicants reserve the right to submit further arguments in support of the above stated position, should that become necessary. No arguments are waived and none of the Examiner's statements are conceded.

In view of the above, it is respectfully submitted that the present application is in condition for allowance, and a Notice of Allowance is earnestly solicited.

Respectfully submitted,

By 
Dicran Halajian, Reg. 39,703
Attorney for Applicant(s)
July 2, 2007

Enclosure: New Abstract

THORNE & HALAJIAN, LLP
Applied Technology Center
111 West Main Street
Bay Shore, NY 11706
Tel: (631) 665-5139
Fax: (631) 665-5101